

REMARKS

Claims 78-100 are pending in the application.

Claims 80 and 93 are objected to for informalities. Claims 80 and 93 are amended as suggested by the Examiner, and therefore, the objections should be withdrawn.

Claims 78, 93, 95, and 97 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding the §112 rejection against claims 78, 93, 95, and 97, the Examiner is respectfully reminded that the MPEP clearly states, "the examiner's focus...for definiteness is...whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available (emphasis added)...[and that threshold is] with a reasonable (emphasis in quote) degree of particularity and definiteness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire." MPEP §2173.02 (8th ed. revision no. 2).

Moreover, definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) the content of the particular application disclosure;
- (B) the teachings of the prior art; and
- ©) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

In reviewing a claim for compliance with 35 U.S.C. §112, second paragraph, the Examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. §112, second paragraph.

(citations omitted) MPEP §2173.02 (8th ed. revision no. 2). Additionally, the Examiner is reminded that the MPEP specifically states that if the Examiner merely wants the Applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. §112, second paragraph MPEP §2173.02 (8th ed. revision no. 2) (emphasis in MPEP).

Regarding claim 78, the Examiner has a problem with the recited limitation of claim 78 to: the dielectric layer is exposed relative to said second capacitor electrode. Applicant submits that the claim is clear and definite on its face. However, the Examiner attempts to allegedly clarify the phrase by asking inappropriate questions which are not the test for determining definiteness, and therefore, not relevant pursuant to the above authority. More egregiously, the Examiner has stated she interpreted the limitation to read, "removing the second capacitor electrode so as to expose the dielectric" contrary to the specific and definite language presented by the Applicant. This is highly improper on several levels.

First, the patent statutes require claims to be interpreted in accordance with what the Applicants regard as their invention. Accordingly, the claims must be read as Applicant regards them, exactly as they are worded. The Examiner's interpretation refers to language *which is not in claim 78*, and are accordingly

non-sequitur to interpretation of the claim since it does not literally include such language. Applicant regards aspects of his invention as defined by the claims. **Applicant respectfully stresses to the Examiner** that she must interpret the claims in accordance with their literal wording, and to the extent the Examiner has not already done so, such is mandated now.

Secondly, by interpreting claim 78 as having limitations that do not exist, the Examiner is improperly narrowing Applicant's claimed invention. In particular, referring to MPEP §2173.04 (8th ed. revision no. 2), the breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). It is further stated in such MPEP section that *if the scope of the subject matter embraced by the claims is clear and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. §112, second paragraph*. In no way have Applicants indicated that they intend the invention to be of a scope different from that defined in the claims. To the contrary, the claims as presented define the appropriate scope of certain aspects of the invention.

Finally, pursuant to the above authority regarding §112, second paragraph rejections, claim 78 is definite. The alleged problematic language to the dielectric layer is exposed relative to said second capacitor electrode is clear and definite, particularly when analyzed by one possessing the ordinary level of skill, and in consideration of the content of the particular application disclosure and the teachings of the prior art. The Examiner presents inappropriate questions

to allegedly clarify the limitation of claim 78 that are directed to “how” the dielectric layer is exposed relative to said second capacitor electrode which are not relevant to definiteness and which Applicant is not required to define as his invention. One possessing the ordinary level of skill in the art and given the application disclosure for review would understand the language of claim 78, and therefore, claim 78 is definite and the §112 rejection is inappropriate and should be withdrawn.

Regarding the §112, second paragraph rejection against claims 93, the Examiner seems to be confused at the claim reciting to different structures comprising uppermost surfaces as if a structure can have only one uppermost surface. Applicant submits each feature of a structure has an uppermost surface. For example, exemplary embodiments of Applicants invention disclosed at Fig. 8 illustrates storage nodes 66, 68 having uppermost surfaces 66a 68a with an insulative cap 72 formed over the uppermost surfaces 66a 68a, and wherein insulative cap 72 has its own uppermost surface 70a (Fig. 8; pg. 8). Notably, the respective uppermost surfaces are formed at different elevations relative the substrate 22. Pursuant to the above authority, one possessing the ordinary level of skill in the art and given the application disclosure for review would understand the language of claim 93, and therefore, claim 93 is definite and the §112 rejection is inappropriate and should be withdrawn.

Regarding the §112, second paragraph rejection against claims 95 and 97, the claims are amended for clarification, and therefore, the §112 rejection is rendered moot and should be withdrawn.

Claims 78-97 stand rejected under 35 U.S.C. §102(e) as being anticipated by Jeng et al., 6,184,081. Claims 78-97 stand rejected under 35 U.S.C. §102(e) as being anticipated by Nakamura, 2001-0044181.

Regarding the rejection against claims 78-97 based on Jeng, such rejection is inappropriate and must be withdrawn. Jeng has a priority date of October 8, 1999. The present application has a priority date of September 2, 1999 (see cross-related data of preliminary amendment filed July 25, 2003). Consequently, Jeng is not prior art relative the present application, and therefore, the rejection based on Jeng is inappropriate and must be withdrawn.

Regarding the rejection against independent claim 78 based on Nakamura, claim 78 is amended to recite forming a first capacitor electrode supported by said substrate and including roughened polysilicon. The amendment language is supported by exemplary embodiments of the invention disclosed by the originally-filed application at, for example, Fig. 11. Nakamura fails to teach or suggest roughened polysilicon, and therefore, it is inconceivable that Nakamura teaches or suggests the above positively recited limitation of claim 78. Accordingly, claim 78 is allowable over Nakamura.

Claims 79-87 and 98-99 depend from independent claim 78, and therefore, are allowable for the reasons discussed above with respect to the independent claim, as well as for their own recited features which are not shown or taught by the art of record.

Regarding the rejection against independent claim 88 based on Nakamura, claim 88 is amended to recite third and fourth capacitor electrodes forming cell

electrodes of respective first and second capacitors and **being electrically isolated from one another.** The amendment language is supported by exemplary embodiments of the invention disclosed by the originally-filed application at, for example, Fig. 11. Nakamura teaches each cell electrode 56 is shared between two adjacent capacitors (Figs 4-6), and therefore, Nakamura does not teach or suggest cell electrodes of respective first and second capacitors being **electrically isolated from one another** as positively recited by claim 88. Accordingly, claim 88 is allowable over Nakamura.

Moreover, claim 88 recites selectively removing selected portions of said conductive layer to expose a first portion of said first dielectric layer relatively proximate said substrate and to ... form cell electrodes of respective first and second capacitors. However, Nakamura teaches to remove portions of a polysilicon film to form electrodes 56 between respective storage nodes 46, but the electrode material 56 remains over the portion of dielectric layer 52 relatively proximate the substrate (Figs. 4-6). Accordingly, it is inconceivable that Nakamura teaches or suggests selectively removing selected portions of said conductive layer to expose a first portion of said **first dielectric layer relatively proximate said substrate** as positively recited by claim 88. For this additional reason, claim 88 is allowable.

Claims 89-92 and 100 depend from independent claim 88, and therefore, are allowable for the reasons discussed above with respect to the independent

claim, as well as for their own recited features which are not shown or taught by the art of record.

Regarding the rejection against independent claim 93 based on Nakamura, claim 93 is amended to recite first and second capacitor electrodes and the dielectric layer form a single capacitor, and wherein the first and second capacitor electrodes are operatively isolated from adjacent capacitors. The amendment language is supported by exemplary embodiments of the invention disclosed by the originally-filed application at, for example, Fig. 11. Nakamura teaches each cell electrode 56 is shared between two adjacent capacitors (Figs 4-6), and therefore, Nakamura could not possibly teach or suggest capacitor electrodes are operatively isolated from adjacent capacitors as positively recited by claim 93. Accordingly, claim 93 is allowable over Nakamura.


Claims 94-97 depend from independent claim 93, and therefore, are allowable for the reasons discussed above with respect to the independent claim, as well as for their own recited features which are not shown or taught by the art of record.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any

such subsequent action.

Respectfully submitted,

Dated: 3-31-05

By: 
D. Brent Kenady
Reg. No. 40, 045